

Application Serial No. 10/532,017
Attorney Docket No. B1180/20035
Amendment Dated January 27, 2009

REMARKS/ARGUMENTS

Claims 1-20 are pending in this application with Claims 1, 12 and 20 independent. By this Amendment, Claim 16 is amended and Claims 19-20 are added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claim 16 is amended to provide proper antecedent basis for the attachment device. New Claims 19 and 20 add the feature of both the sample receptacle device and the data storage device being adapted for use in an environment with a temperature below -100° Celsius. Support for this feature is shown in the specification, for example, at Page 10, paragraph 1 and Page 6, last line. No new matter is added.

REQUEST FOR EXAMINER INTERVIEW

As indicated in the Request for Continued Examination, Applicants respectfully request an interview with the Applicants' undersigned representative before the next Office Action on the merits to help clarify perceived misunderstandings and to expedite the prosecution of the application.

PRIOR ART REJECTIONS

Smollett

Claims 1-5, 7-8, 10, 12-13, 15 and 16 stand rejected under 35 U.S.C. §102(b) over Smollett, et al. (U.S. Patent No. 3,292,424). Claims 6, 9 and 18 stand rejected under 35 U.S.C. §103(a) over Smollett, et al. These rejections are respectfully traversed for at least the reasons set forth below.

The Examiner asserts that Smollett discloses a cryostorage device 22, a data storage device 69, a receptacle device 77, and a sample chamber 82 as recited in the claims. The Examiner also asserts that the features of Claims 6, 9 and 18 missing in Smollett are an obvious implementation or a known feature. The Examiner's assertions are respectfully traversed, at least because Smollett does not disclose the following features recited in independent Claims 1 and 12:

- a. a data storage adapted to store a plurality of data;
- b. a sample chamber being directly attached to the data storage device; and
- c. the sample chamber being attached to the data storage device in a flexible and movably hanging manner.

The Examiner considers the relay 69 of Smollett as a data storage device. The Examiner asserts that Smollett's relay 69 stores a plurality of data because it works on a plurality of switches 66 and 63. This assertion is traversed, because the solenoid 63 only receives input from the relay 69, and does not send any data to the relay 69.

As Smollett discloses as Column 3, lines 36-39, the solenoid 63 is actuated by the electrical relay 69 in response to electric current conducted from the thermal regulator 66 by the electric cable 68. For example, when the temperature in chamber 15 becomes warmer than desired, the thermal regulator switch 66 causes the solenoid 63 to change the position of the valve 60 to connect the duct 50 with the by-pass duct 55. See Column 3, lines 38-57. In other words, the transfer of any data is one way only, from the switch 66 to the solenoid 63 via the relay 69. Accordingly, relay 69 does not accept any data from the solenoid 63. In fact, the relay 69 relied upon by the Examiner is an electromechanical switch, which has two conditions,

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namely activated or non-activated. Therefore, the relay 69 stores only one bit, not a plurality of data as asserted by the Examiner. Accordingly, the relay 69 of Smollett does not represent a data storage device as claimed, because the relay is not capable of storing a plurality of data.

In the Advisory Action, the Examiner asserts that Applicants' argument of the transfer of any data being one way only from the switch 66 to the solenoid 63 is not acceptable because there is no direct communication between the switch 66 and the solenoid 63. The Examiner continues that any communication from switch 66 goes to the solenoid 63 via relay 69, and that therefore "it transpires that relay 69 receives some [some] communication from switch 66 and transmits to the solenoid 63 for [a]execution a desired function at a specific point." In response, Applicants respectfully invite the Examiner to read the full passage of the Applicants' prior remarks, which state that "the transfer of any data is one way only, from the switch 66 to the solenoid 63 via the relay 69." In other words, Applicants clearly submitted that the transfer of any data is one way, that is, in one direction from the switch 66 to the solenoid 63 via the relay 69. The use of the relay 69 as a one way switched value is agreed upon, as previously stated.

Continuing with the Advisory Action, the Examiner states that it is mentioned that a relay station or relay can comprise a data storage circuit, channel switching circuit return circuit, etc., and for evidentiary reference cites Fig. 1 and Column 2 of U.S. Patent No. 5,331,633 to Ari, and Paragraph 26 of Patent Application Publication No. US2003/0028660 to Igawa, et al. Applicants respectfully submit that Smollett does not disclose a relay comprising a data storage circuit or channel switching circuit return circuit. Moreover, the relay stations shown in Fig. 1 of Ari and Igawa clearly do not represent a relay as disclosed by Smollett. For Example, if the relay station R in Fig. 1 would somehow include a relay (switch), such a relay would not represent data

storage.

As one of ordinary skill in the art would have readily understood, the term “relay” has different meanings within the fields of electronics and data processing. In the electronics field, as applied by Smollett, a relay is an electrical switch that opens and closes under the control of another electrical circuit (thermal regulator switch 66). In contradistinction, a data processing relay may be used as a repeater. Ari and Igawa relate to data processing. Smollett does not relate to data processing. Accordingly, the relays used in the different fields are different components. The relay 69 disclosed in Smollett and relied upon by the Examiner is an electromechanical switch. The relay 69 stores only one bit to activate or deactivate transfer of one way data from the switch 66 through the relay 69 to the solenoid 63. Smollett does not disclose, use or need a unit that stores a plurality of data, such as a data storage device. There is simply no return of data from the solenoid 63 to the relay 69. Accordingly, Smollett does not disclose a data storage adapted to store a plurality of data at recited in the independent claims.

Regarding the claimed direct attachment between the sample chamber and the data storage device, as recited in the independent claims, the Examiner asserts that the duct cable 82 of Smollett is connected to the relay 69 through thermostatic fluid contained in the chamber 15. This assertion is respectfully traversed, because the thermostatic fluid, which is merely a chilled atmosphere, in the chamber 15 cannot provide a direct attachment between the sample chamber and the data storage device.

The thermostatic fluid in Smollett is simply atmospheric air chilled with dry ice 36 to maintain a desired temperature differential between chambers 13 and 15. See Column 3, lines 55-59. This chilled environment cannot provide a direct attachment of the sample chamber with

a data storage device. The claimed term “directly attached” would be understood to a person of ordinary skill in the art as a fixed connection between both parts. The Examiner has identified the electric lead 68 as a direct attachment. However, the electric lead 68 connects the switch 66 to the relay 69 only. The fluid referred to by the Examiner as an attachment from the duct cable 82 to the relay 69 is simply an atmospheric environment chilled with dry ice and incapable of providing a direct attachment as claimed because the thermostatic fluid is not an intervening connector therebetween. Therefore, the duct cable 82 and relay 69 are not directly attached by an atmosphere of thermostatic fluid.

Under MPEP §2111, it is understood that during patent examination, pending claims must be given their broadest reasonable interpretation consistent with the specification (i.e., the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art). In other words, the broadest reasonable interpretation of the claims must be consistent with the interpretation that those skilled in the art would reach. Here under the Examiner’s interpretation, thermostatic fluid provides a direct attachment between a duct cable 82 and electronic leads. Under this interpretation, all items would be directly attached in a chilled atmosphere, such as all items in an air conditioned house, all birds flying in an arctic/Antarctic region, etc. Applicants respectfully submit that this interpretation of the Examiner of a duct cable and electronic leads being directly connected by a chilled atmosphere (i.e., thermostatic fluid) is unreasonable and inconsistent with the interpretation that those skilled in the art would reach. The chilled atmosphere (i.e., thermostatic fluid) in the chamber 15 cannot provide a direct attachment between the duct cable 82 and electronic lead 68 of Smollett. Applicants note that this claimed feature of direct attachment was not expressly discussed by the

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Examiner in his claim rejection, nor in his response to arguments despite the Applicants' previously filed amendment and discussion thereof, and thus may have been overlooked during examination.

In the Advisory Action, the Examiner asserts that the thermal regulator switch 66 and duct cable 82 are in the same environment of chamber 15, and that the duct 82 is directly connected to the oil sample container 80. This explanation by the Examiner still does not provide a showing of a sample chamber being directly attached to the data storage device, as recited in the independent claims. As one of ordinary skill in the art would readily understand, the atmospheric environment of chamber 15 is incapable of providing a direct attachment as claimed because the thermostatic fluid is not an intervening connector therebetween. Applicants' assertion that the duct 82 is directly connected to the oil sample container 80 still does not provide a direct attachment between a sample chamber and the data storage device as recited in Claim 1, because the oil sample container 80 is not directly attached to the thermoregulator switch 66 of Smollett.

The Applicants also find the Examiner's interpretation of directly attached in contradiction to the Examiner's prior statement of direct communication. Applicants respectfully request clarification of how "there is no direct communication between the switch 66 and the solenoid" despite the electrical leads 68 and relay 69 therebetween, yet the environment of chamber 15 somehow provides direct attachment between the duct 82 and the switch 66.

As the sample chamber of Smollett is not attached to the relay 69, or to any data storage, a flexible and moveable hanging attachment cannot be disclosed or achieved by Smollett.

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Accordingly, for at least the reasons set forth above, Applicants respectfully submit that Smollett does not disclose at least one data storage adapted to store a plurality of data, at least one sample chamber being directly attached to the at least one data storage device, and the at least one sample chamber being attached to the at least one data storage device in a flexible and movably hanging manner as recited in the independent Claims 1 and 12. Claims 2-10, 13 and 15-18 depend from one of the independent Claims 1 and 12, and are also believed to be allowable over Smollett for at least the reasons discussed above. Withdrawal of the rejection of the claims under 35 U.S.C. §102 and §103 over Smollett is respectfully requested.

Smollett and Takiue

Claim 14 stands rejected under 35 U.S.C. §103(a) over Smollett in view of Takiue (U.S. Patent Publication No. 2002/0007256A1). This rejection is respectfully traversed for at least the reasons set forth below.

The Examiner admits that Smollett does not disclose measured and reference data and asserts that it would have been obvious to modify Smollett in view of the process center 32 of Takiue to obtain the desired analysis of the data. However, assuming, *en arguendo*, that the references could be combined, the combination would not have resulted in the features discussed above that are recited in Claim 12, and missing in Smollett. That is, Takiue does not teach at least one data storage adapted to store a plurality of data, at least one sample chamber being directly attached to the at least one data storage device, and the at least one sample chamber being attached to the at least one data storage device in a flexible and movable hanging manner as recited in independent Claim 12, from which Claim 14 depends. Therefore, Claim 14 is believed to be allowable over the combination of references. Withdrawal of the rejection of

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Claim 14 under 35 U.S.C. §103(a) is respectfully requested.

Claim 11

Applicants resubmit that Claim 11 is not rejected or discussed in the Office Action. Applicants further note that Claim 11 has never been rejected over prior art, and thus believe the Examiner agrees that Claim 11 recites allowable subject matter above the subject matter recited in its independent Claim 1. Confirmation of the indication of allowable subject matter is respectfully requested.

NEW CLAIMS

The Amendment adds new Claims 19 and 20, which recite that both the sample receptacle and the data storage device are adapted for being transferred in an environment below -100° Celsius. The relay 69 of Smollett is operated at room temperature outside the thermostatic chamber 15. Accordingly, Smollett provides no disclosure nor teaching of transferring or adapting both the sample chamber and the relay to a temperature below -100° Celsius. Applicants respectfully submit that Claims 19 and 20 are also allowable over the prior art.

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CONCLUSION

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

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